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No. 81-89

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

WALTER ZANT, WARDEN,
Petitioner,

v.

ALPHA OTIS O'DANIEL STEPHENS,
Respondent.

On Appeal from the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF BY PETITIONER

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In Respondent's brief in opposition to the petition for writ of certiorari, Respondent stated that a writ of certiorari should not be granted because the case is

not ripe for disposition. Respondent alleged that three significant issues concerning his guilt were not considered by the District Court and the Court of Appeals had allegedly directed the District Court to address these issues.

This argument is vacuous. Respondent, who has been represented by the same attorney in State and federal habeas corpus proceedings, failed to raise the issues of competency to stand trial, effective assistance of counsel, and voluntariness of his confession in the Superior Court of Tattnall County, on habeas appeal to the Georgia Supreme Court, or in the District Court in the Middle District of Georgia. Respondent was personally addressed by the Superior Court of Tattnall County and asked if he had any further allegations to add to

those raised by his attorney, and Respondent replied in open court that he did not. The first time that the issue of competency to stand trial, effective assistance of counsel, and involuntariness of his confession were presented was in an amicus brief on appeal to the Fifth Circuit Court of Appeals.

The Fifth Circuit Court of Appeals remanded these issues to the District Court to "take whatever action is appropriate respect to these issues." Stephens v. Zant, 631 F.2d 397, 407 (5th Cir. 1980). Given Respondent's failure to raise these issues to the State courts, he has deliberately bypassed his State procedures and is precluded from raising these issues before the District Court. See generally Murch v. Mottram, 409 U.S. 41 (1972).

The petition brought by Warden Zant is ripe for disposition, the issues are clear, there is a direct conflict between the Fifth Circuit Court of Appeals and the Georgia Supreme Court, and this Court should grant a writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Harrison Kohler, Attorney of Record for the Petitioner and a member of the Bar of the Supreme Court of the United States, certify that in accordance with the Rules of the Supreme Court of the United States, I have served three copies of this Reply Brief on Behalf of Petitioner upon the Respondent by depositing this brief in the United States Mail with sufficient, first-class postage affixed and addressed to counsel for Respondent as follows:

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(Cont.)

This 24th day of August,

1981.

Harrison Kohler

HARRISON KOHLER
Assistant Attorney
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Counsel of Record
for Petitioner